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Office for Information
Technology Policy

EX PARTE OR LATE FILED

ALA American Library Association

June 23, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

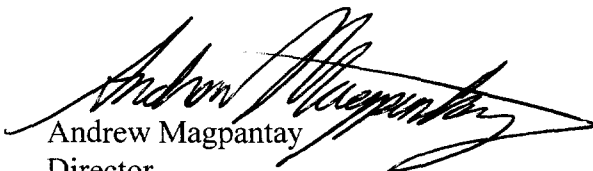
Re: Ex Parte Presentation
CC Docket No: 96-45, Federal-State Joint Board on Universal Service

Dear Mr. Caton:

Representatives of the Education and Library Networks Coalition (EdLiNC), including Andrew Magpantay, Jefferson Burnett, and Aleck Johnson met today with Irene Flannery and James Rubin of the FCC to get clarification on some of the wording in the FCC's May 7th Report and Order on Universal Service (CC 96-45). Some of these questions are included in the attached document, which was distributed at this meeting.

If you have any questions regarding this filing, the attached document, or the meeting we held this morning, please feel free to contact me at 202/628 8421.

Sincerely,



Andrew Magpantay
Director
Office for Information Technology Policy
American Library Association

Enclosure: EdLiNC Clarification Questions Draft

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EdLiNC Clarification Questions

(Note: Paragraph numbers refer to the Report and Order as printed in the **Federal Register**, Volume 62, No. 116, Tuesday, June 17, 1997, pp 32898-32958)

1. First Tier Priorities

- a. ¶264 Question for Clarification: Shouldn't services which are sold as part of a bundled package with eligible services be eligible for discounts (under the same sorts of conditions that information services bundled with internet service are eligible)?
 - i. Rather than disqualifying bundled service packages that include both eligible and ineligible telecommunications services, a system similar that that instituted for Internet access should be used. For instance, if unbundled costs for individual elements can be determined, discounts should apply only to the portion that is eligible for discounts.
- b. ¶268 Question for Clarification: Who exactly is an eligible telecom carrier? Who is eligible to provide services?
 - i. The order is confusing on the topic of who is eligible to provide services to schools and libraries. Are all providers of eligible services eligible to receive recompensation from the Universal Service Fund for services provided at a discount to schools and libraries?
 - ii. Is it intended that schools and libraries be able to purchase all categories of supported services at a discount from any telecommunications carrier? If not, please clarify which categories of services (i.e., in an FCC proposed taxonomy with examples of included services or in the categories of telecommunications services, internal connections, and Internet access as set forth in the Commission's Order -- FCC 97-157) schools and libraries may purchase under the Universal Service discount program (i.e., with reimbursements or offsets to fund contributions for providers in the amount of the discount) from "eligible" or "non-eligible" telecommunications carriers.
- c. ¶285 Question for Clarification: What entities are eligible to be included in consortia? What does the tariff rate limitation mean?
 - i. EdLiNC seeks further explanation of a number of components in this rule. First, the rule states that "public sector (governmental)" entities can participate in consortia with eligible schools and libraries. The rule is not clear whether it defines the term "public sector" as encompassing more than governmental bodies. For example, can non-profit organizations involved with education become members of such consortia? Furthermore, many of the services that school districts and library systems will be requesting, such as T-1 service, cable modem access, and wireless access,

- are not tarified in some states. Does this preclude any public-private consortia if these services are being requisitioned?
- ii. The rule also appears to bar in a de facto manner private companies from joining eligible school and library consortia unless the consortia is receiving rates at a tarified level (see below). Does this FCC intend this result, which could significantly diminish aggregation efforts, even in light of the fact that these private companies clearly will not receive interstate telecommunications discounts?
 - iii. The rule permits private company membership in such consortia only when the schools and libraries in the consortia will receive interstate telecommunications services discounts from LCPs that are "generally tarified rates." Does this mean that the LCP must be a tarified rate (i.e. a high standard undiscounted rate for a particular telecommunications service) ? Or, as the use of the term "generally" indicates, is it the FCC's intention to allow private company participation in consortia if the LCP is a high, nearly tarified rate ?
 - iv. The restriction in (non-tarified price receiving) consortia to only "public sector (governmental)" customers also seems to set up an arbitrary distinction. For example, as the rule is now stated, schools and libraries in consortia with state colleges and universities presumably would be eligible for universal service discounts (though the colleges and universities in the consortia would not) while schools and libraries in consortia with private colleges and universities participation would be ineligible for universal service discounts.
 - v. Similarly, schools and libraries in consortia with local **government** museums presumably would be eligible for universal service discounts (though again the museums themselves would not) while schools and libraries in consortia where **private** museums participate would be ineligible for universal service discounts. This later situation has the unintended consequence of contradicting Congresses intent in setting up a joint Institute for Museum and Library Services (IMLS) as part of the Library Services and Technology Act.
- d. ¶290-292 Question for Clarification: How can schools and libraries be sure that the LCP really is the lowest price? Is there a way to audit? Who will be responsible for audits?
 - e. ¶291 Question for Clarification: Does any section of the "rules" (i.e., as provided in Appendix I of FCC 97-157) other than in regard to the competitive bidding process (section 54.504) specifically implement the Commission's decision in paragraph 485 to require the "lowest corresponding price" (LCP) for rates charged to all schools and libraries? Must schools/libraries participate in the Universal

- Service discount program in order to receive the LCP?
- f. ¶296 Question for Clarification: Institutions which believe that they have not received the LCP can seek "recourse from the Commission regarding interstate rates, and from state commissions, regarding intrastate rates."
- i. What would be the basis for such an appeal? What elements have been used to calculate an LCP? What will constitute a "similarly situated customer" and how can beneficiaries as well as the public check this. (See also ¶365 on auditing). Which services are defined as interstate and which are defined as intrastate?
- g. ¶310 Question for Clarification: Assumed Proportionality& Related Issues
- i. What circumstances are necessary to trigger a review of the degree of administrative burden and the impact on level of school participation prior to 2001?
- ii. Will the Joint Board's review of the discount program in 2001 or sooner evaluate the significant administrative burden that compiling student poverty data through the means specified in the FCC order places on schools, primarily private, that do not regularly collect such data or do not currently have complete data on file?
- iii. As the universal service fund is to be administered on a "first come, first serve" basis, the additional administrative burden that these schools face in the initial years of the program raises serious concerns. Will the review process take into consideration the impact that this administrative burden has had on schools' initial participation levels?
- h. ¶326 Question for Clarification: What does this section on the roll-over mean? What does "unused portion of the funding authority" mean (ie. \$2.25 billion - amt. used)? Is this just a 50% annual roll-over? Please provide some examples to make this clear, if possible.
- i. ¶336 Question for Clarification: how will annual reapplications affect getting a very low pre-discount price achieved through multi-year contracts? What about contracts signed prior to the acceptance of bids by the subcontractor?
- i. Aggregation and long term contracts are the best ways to ensure that schools and libraries receive the lowest possible pre-discount price on services. Given the annual reapplication process for schools and libraries, how will schools and libraries be able to take advantage of the deeper discounts offered by long-term contracts if they are unable to guarantee federal assistance from year to year?
- ii. The current FCC rule and subsequent statements have been confusing on the topic of which existing contracts will be eligible for discounts. We believe that all contracts signed prior to the time that the subcontractor or fund administrator has actually put the website bidding mechanism in

place should be exempted from the competitive bidding requirement outlined in the Order. This would prevent the problem of discrimination against eligible institutions that have signed contracts in late 1996 or 1997 which otherwise will have to void their current contracts and go back out for bid in order to receive discounts.

- j. ¶340 Question for Clarification: if a state has not established an intrastate discount program at least equal to the interstate, does this mean that schools and libraries can't receive any discounts on eligible interstate services? Also, what elements does a state program need to include in order to be approved?
 - i. The rule is also unclear on what guidelines an intrastate discount program will have to meet in order to be eligible to withdraw from the federal universal service fund. EdLiNC believes that intrastate discount programs which will be able to draw on the interstate pool should be substantially similar to the federal discount program, including similar discount levels, similar services eligible for discounts, and similar entities eligible to receive discounted rates. States should be able to exceed these minimums, and the FCC should not impose any sort of penalty on states which seek to go beyond the federal program to promote connectivity in their state.
- k. ¶342 Question for Clarification: Should the definition of eligible schools come from be ESEA (1965) or IASA (1994)?
 - i. The Elementary and Secondary Education Act (ESEA) of 1965 has been amended and updated by the Improving America's Schools Act (IASA) of 1994. This should be reflected in the order. An updated reference to the Elementary and Secondary Education Act of 1965 should be included to read "as amended by the Improving America's Schools Act of 1994." For laws to be current and "good" they must be relevant. This addition will need to be made in both this paragraph and any other mentions of ESEA 1965. (PL 103-382 is found at 20 USC 6301.)
- l. ¶358 Question for Clarification: The order requires both schools and libraries to show how information services will be integrated into their "curricula." Since libraries do not have curricula, should libraries demonstrate how services would be integrated into their service plan (or equivalent document)?
- m. ¶377 Question for Clarification: When will the applications be ready and when can they be filed and to who? Are funds available as of 1/1/98 and if so, when will NECA begin to collect the preliminary finds? Will discounts be applicable to services delivered or ordered prior to 1/1/97 but after the effective date of the order?

2. Second Tier Priorities

- a. ¶277 Question for Clarification: Equipment necessary to connect to the internet

that performs the function of internal connections should be eligible for discounts.

- i. A modem performs a function which is, to the end user, identical to that performed by the "inside connectivity" -- ie. protocol translation, connection, and network negotiation. Excluding modems seems to be inconsistent with the descriptions of "inside connectivity."
- b. ¶277 Question for Clarification: what does "basic installation and maintenance" mean?
 - i. Does the term "basic installation and maintenance services" limit the types of services eligible for the discounts by modifying "installation and maintenance" with "basic"? Also, ¶269 uses the phrase "installation and maintenance" without the modifier basic. Did the Commission intend the term "basic" to be included, and, if so, what is the definition of "basic" installation and maintenance" as opposed to "installation and maintenance"?
- c. ¶290 Question for Clarification: How can schools and libraries challenge the LCP? What are some identifiable elements to determine the LCP? Also ¶296 How will schools and libraries know when to go to the state commissions versus the federal commissions.
- d. ¶292 Question for Clarification: How will large-scale consortia work when carriers don't have to provide discounted services beyond their geographical area?
 - i. Given that many library systems, school districts, and consortia may stretch across LATA lines, how will the LCP scheme be reconciled across service areas?
- e. ¶307 Question for Clarification: Every school and library in the United States is classified as being in a metropolitan or nonmetropolitan (rural) area by the Nation Center for Education Statistics' metropolitan status codes. Would it be possible to use these codes instead of the OMB Metropolitan Statistical Areas?
- f. ¶312: Question for Clarification: what does "actual count" mean?
 - i. ¶567 of the Joint Board recommendation states "the number of students who are eligible for the national school lunch program." We prefer this to the language in the Commissioners' text that states "an actual count of students eligible for the national school lunch program." The count for this federal program takes place in most districts on the fourth Friday of the school year. An "actual count" of eligible students is difficult to obtain, especially for schools with few resources. Instead of requiring an actual count, we believe that schools and libraries should be able to use either a count of actual recipients or a count of eligible recipients.
- g. ¶324 Question for Clarification: what exactly is the process by which EdLiNC could have its hardship proposal revisited and when? What does "if demand exists" mean relative to the roll-over of unused funds?

- i. What are the circumstances necessary to trigger a review of EdLiNC's "hardship appeals process" prior to 2001? What would this reconsideration process entail and when is the earliest time it could occur?
- h. ¶333 Question for Clarification: How would the notification process work once the cap is reached? What is meant by "reasonable steps"?
 - i. Please clarify what is meant by the phrase "the commission will take reasonable steps to notify the educational and library communities" once the cap has been met. Alternatives to reach technology-undeserved areas must be developed. We would suggest that the fund administrator determine which institutions have not yet received discounts and target their communications so that all of these entities are reached. Since many of these institutions will *not* be technologically advanced, traditional methods of communication (such as direct mailing) may well be necessary in order to inform these entities that the trigger has been reached.
- i. ¶365 Question for Clarification: if schools and libraries are to be audited, why aren't carriers noted too? Do we really need an independent auditor? Can't we use the FCC of NECA stable of auditors?
 - i. Carriers must be subject to audit on the LCP in the same fashion that eligible discount recipients are subject to audit. Carriers, unlike schools or libraries, will actually be the recipients of funds from this program. Also, carriers have a history of "billing errors" and other activities which have resulted in tremendous overbilling of consumers; those errors must not be repeated in this program, and auditing of carriers is one of the pieces necessary to ensure that pricing remains fair and equitable.

3. Third Tier Priorities

- a. ¶254 Question for Clarification: telecom service needs are current **and** future
 - i. Does the statement "provide schools and libraries with a package of commercially available telecommunications services" include new services as they become commercially available?
- b. ¶310 Question for Clarification: Will most schools and libraries use conventional phone lines to connect to the internet?
 - i. As stated in our ex parte filings (see for example May 14, 1996) for libraries, currently 72.8% of connected libraries have a 56Kbps line, and 18.2% have a T1 line. That means that 91% of connected libraries have better the voice grade access to the Internet. For schools, 27% surveyed in 1996 had 56kb or faster connections. The growth in high speed connections to schools and libraries has been rapid, and constrained primarily by cost (which the discounts will help alleviate). We believe that most schools and libraries will be using high-speed, dedicated lines to

connect to the Internet very shortly, as their bandwidth needs eclipse the capacity of standard telephone lines.